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Honorable D.J. McInnes
Director, Department of Transportation
1409 Coliseum Boulevard
Montgomery, Alabama 36110

Excise Tax – Motor Fuels – Fees –
Taxes – Oil and Gas – Counties

Act 54 (1951) does not include the
State of Alabama or its agencies as a
“person” subject to a Montgomery
County excise tax on gasoline.

Dear Mr. McInnes:

This opinion of the Attorney General is issued in response to your
request.

QUESTION

Does Act 54 (1951) allow Montgomery County to
impose a gasoline excise tax on the State of
Alabama or its agencies?

FACTS AND ANALYSIS

Act 54 (1951) authorizes Montgomery County “to impose an excise
tax of one cent per gallon upon the selling, distributing, storing, or
withdrawing from storage, for any use, of motor fuels. . . .” 1951 Ala.
Acts No. 54, 266. The act defines “person” as “every person, corporation,
co-partnership, company, agency, or association, singular or plural.” 1951
Ala. Acts No. 54, 266-67.

County commissions “can exercise only such powers as are
expressly given them by statute, or such as arise by necessary implication

from the powers granted, or are indispensable to carry into effect the object and purpose of their creation." *Dillard, et al. v. Baldwin County Comm'n*, 833 So. 2d 11, 16 (2002), citing *Arledge v. Chilton County*, 237 Ala. 96, 99, 185 So. 419, 421 (1938); see also *Corning v. Patton*, 236 Ala. 354, 356, 182 So. 39, 40 (1938). An enactment that confers power upon a county commission should be narrowly construed. *Dillard*, 833 So. 2d at 16, citing 4 Chester James Antieau, *Antieau's Local Government Law: County Law*, § 32.03 (1989).

Act 54 does not mention the State of Alabama or its agencies. "As a general rule of statutory construction, without any express legislative declaration, general words in a statute do not apply to the state, nor affect its rights, unless an intention to the contrary appears." *State ex rel. Smith v. McCord*, 83 So. 71 (1919). The State of Alabama and its agencies are not expressly included in the act's definition of a "person" who is subject to the gasoline tax. The Legislature has specifically included the State of Alabama and/or its agencies whenever it intended for legislation to apply to the state and/or its agencies. For example, section 40-17-30 of the Code of Alabama, a similar gasoline tax, specifically includes "agencies of the state" in its definition of "person." ALA. CODE § 40-17-30 (2003). This Office has previously opined that Act 54 does not subject the State of Alabama to the excise tax on gasoline because the State of Alabama is not expressly mentioned in the act. Opinion to Honorable H.W. Suddath, Administrator, Montgomery County Commission, dated January 11, 1971.

It is well settled that a "fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature enacting the statute." *Pace v. Armstrong World Indus., Inc.*, 578 So. 2d 281 (Ala. 1991); see also, *Clark v. Houston County Comm'n*, 507 So. 2d 902 (Ala. 1987); *Advertiser Co. v. Hobbie*, 474 So. 2d 93 (Ala. 1985); *League of Women Voters v. Renfro*, 290 So. 2d 167 (1974). There is no language in Act 54 that indicates the Legislature intended to include the State of Alabama or its agencies. "Unless such is the clear legislative purpose, an act will not be so interpreted." *State v. City of Montgomery*, 151 So. 856, 858 (1933).

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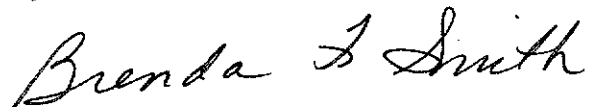
CONCLUSION

As the State of Alabama is not named in Act 54, this Office concludes the Montgomery County Commission does not have the authority to enforce a gasoline excise tax on the State of Alabama or its agencies.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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